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6/9/08 (10)

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Lauren S. Rosenzweig, Chair
Acton Board of Selectmen

June 5, 2008

To: Jonathan Wagner, Acting Chair
Acton Board of Appeals

From: Acton Board of Selectmen

RE: Alexan Concord Development

DRAFT

Dear Mr. Wagner:

The Board of Selectmen has reviewed the proposal for 350 rental units on property on the Acton/Concord/Maynard/Sudbury town lines for which all the actual housing units will be located in the Town of Concord. We have the following comments:

1. Comprehensive Permit: There is a legal question about whether the developer is entitled to obtain a comprehensive permit pursuant to M.G.L. c. 40B, where none of the units are located in Acton. That question is up to the BOA to resolve as part of the Board's adjudicatory function. The Board should obtain an opinion from legal counsel on the issue. The Selectmen do not feel that it is within our Board's purview to advise the BOA on that issue, where the issue is legally committed to the BOA to decide.

However, the Selectmen favor creation of a diversity of housing opportunities in our region. A wider range of housing options allows for a wider range of workers to meet the needs of local private and public employers, adding to the prosperity and sustainability of the region.

Should the BOA decide that the developer is not legally entitled to obtain a comprehensive permit under the circumstances, the Selectmen urge the BOA to include in its decision any conditions the BOA would require of the developer should the denial be overturned on appeal. That might avoid possible lengthy and costly further appeals.

The Selectmen also understand that, should the BOA decide that the developer is entitled to receive a comprehensive permit, DHCD regulations give the BOA the discretion to deny the permit because the development constitutes a "large project." In exercising its discretion, the Selectmen urge the Board to consider the traffic impacts of the development and the adequacy of any mitigation the developer is willing to provide to offset those impacts.

2. All the project's buildings will be located in the Town of Concord, but Concord maintains that there is no suitable public access to this parcel within their Town. The most obvious, safe and efficient access to the project is via Forest Ridge Road, which is privately owned.

Forest Ridge is built to standards which would accommodate the traffic from the project and has sidewalks to route 62. Concord is one of the owners of Forest Ridge Road and owns property abutting the road and adjacent to the project site, but maintains that deed restrictions prohibit using Forest Ridge as the primary access for the project. The BOA should obtain a legal opinion about whether it is feasible for Concord to negotiate changes in the deed restrictions to allow access through Forest Ridge Road.

3. If access is granted from land owned by the Town of Acton, the Selectmen have grave concerns about the impacts that cars and trucks serving this large neighborhood will have on the safety of our streets, and the impacts in terms of air pollution and carbon emissions. With the rising price of gas it makes no sense to build such a large development without providing adequate pedestrian access to the nearby retail establishments and services. To this end, safe and inviting sidewalks and crosswalks need to be built from the development to the nearby shopping plaza. In addition, as we would require for any development, improvements must be made to Sudbury Road to create safe access and egress. See the comments of the Acton Engineering Department for more details, as well as Acton's traffic study Peer Review.
4. In Acton, for such a large project, the Selectmen would require a secondary access, both for more efficient traffic flow, as well as to accommodate emergencies such as a blockage of the main access by fire, accident, or other unforeseen event. The BOA should ensure that the developer provides adequate secondary access, preferably full access, or emergency access if full access is not possible. The BOA should also condition a comprehensive permit by requiring a restriction against any additional 40B or other developments using the driveway on Sudbury Road.
5. In such a large project it is likely that there will be a high percentage of commuters into Cambridge and Boston. To this end, the Selectmen believe it is essential that there be a shuttle provided to take people to the train rather than each individual driving their own vehicle. The parking areas for the local commuter rail are already overcrowded with vehicles and cannot accommodate any more.
6. The increase in cars that will utilize High Street to access shopping and services in Acton will result in High Street, which is already dangerous for pedestrians, to become even more dangerous. People living on High Street do walk even though it is terribly risky. This project will exacerbate an already dangerous situation. The BOA should condition any comprehensive permit on the developer providing an adequate contribution to build sidewalks on High Street to mitigate the impact of increased traffic from the development on public safety.
7. The project, while providing regional affordable housing, does not offer any credit to Acton for affordable housing. In other communities with similar circumstances, some compensation in the form of crediting units to the Town who provided the only access available was negotiated. The Selectmen urge the BOA to seek similar compensation as a rationale for granting a comprehensive permit to a project that for the members of our community offers little in the way of saving deed restricted units for our own citizens. Indeed the price point of the affordable Concord units is beyond the means of many of our town workers. In lieu of the granting of units, the Selectmen seek a contribution from the developer that would enable the production of such deed restricted opportunities within the town of Acton through our ACHC.

8. We encourage the BOA to look at this project with a regional view. We applaud the applicants' willingness to work with the towns, and they have agreed to set aside a portion of the land along the Assabet River to remain a green public space. They have expressed a willingness to make the required improvements on Sudbury Road, and provide safe pedestrian access to the nearby shopping center. Traffic studies have indicated that an additional traffic signal at the intersection of Sudbury Road and Powder Mill Road (62) is also warranted. Funds should be held in reserve to install such a signal as it becomes necessary.

Assuming the developer is legally entitled to obtain a comprehensive permit, the Selectmen urge the BOA to approve the project with proper mitigation, contingent on those conditions. The Selectmen will be meeting with the developer to discuss the extent of the mitigation they are willing to offer. In the absence of suitable mitigation, the ZBA should issue a denial.